

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board met on Thursday, December 1, 2011, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, Virginia 23233.

The following members were present:

F. James Ahlberg
Enrico Cecchi
Elena Ferranti
Kimberly B. Kacani, Vice Chair
Milton W. Matthews
Christiaan Melson
Douglas Rogers
Miyun Sung (arrived at 9:47 a.m.)
Lucia Anna Trigiani, Chair

Board members Pamela Coerse and Katherine Waddell were not in attendance.

DPOR staff present for all or part of the meeting included:

Mark N. Courtney, Deputy Director of LRD
Nick Christner, Deputy Director of CID
Trisha L. Henshaw, Executive Director
Heather Gillespie, Ombudsman
Thomas K. Perry, Property Registration Administrator
Betty C. Jones, Administrative Assistant
Jesstina Adelman, Program Analyst

Steven Jack from the Office of the Attorney General was present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the meeting to order at 9:44 a.m. **Call to Order**

The Board welcomed the two newest Board members: Enrico Cecchi, who was appointed to serve as a developer member, and Elena Ferranti, who was appointed to serve as a common interest community manager on the Board. Ms. Henshaw announced that Ms. Trigiani has been reappointed by the Governor for another term. Ms. Sung joined the meeting at 9:47 a.m. **Introduction of New Members**

Ms. Kacani moved to approve the revised agenda. Mr. Melson seconded the motion which was unanimously approved by: Ahlberg, Cecchi, Ferranti, Kacani, Matthews, Melson, Rogers, Sung, and Trigiani.

Approval of Agenda

Ms. Kacani moved that the Board approve the minutes of the September 22, 2011, meeting as amended. Mr. Melson seconded the motion which was unanimously approved by: Ahlberg, Cecchi, Ferranti, Kacani, Matthews, Melson, Rogers, Sung, and Trigiani.

Approval of Minutes

Mr. Matthews moved that the Board approve the minutes of the October 4, 2011, meeting as amended. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, Cecchi, Ferranti, Kacani, Matthews, Melson, Rogers, Sung, and Trigiani.

Mr. Ahlberg moved that the Board approve the minutes of the November 3, 2011, meeting as amended. Mr. Melson seconded the motion which was unanimously approved by: Ahlberg, Cecchi, Ferranti, Kacani, Matthews, Melson, Rogers, Sung, and Trigiani.

Ms. Trigiani opened the floor for public comment. No members of the public present requested to speak.

Public Comment Period

Ms. Henshaw gave an update on the current status of the regulatory review process for several of the Board's regulatory packages.

Update on Regulatory Review Process

The Board was provided with an update on the progress of the Condominium Regulatory Review Committee. Ms. Henshaw provided an updated timeline for the work of the Committee, which has been charged by the Board with performing a detailed review of the Condominium Regulations. Two additional Committee meeting dates have been scheduled. The goal is to present the Committee's final recommendation for consideration at the March 22, 2012, Board meeting.

Report from Condominium Regulatory Review Committee

At the September 22, 2011 Board meeting, Ms. Trigiani expressed concern that the current timeline for review and presentation of a recommendation to the Board would not allow adequate time for the Committee to fully review the draft. In addition, due to the volume of material to consider, one meeting would not provide enough time for the Board to fully review all of the Committee's proposals. A motion was made by Mr. Matthews to withdraw the current Notice of Intended Regulatory Action (NOIRA) and authorize staff to refile a new NOIRA in January in order to allow adequate time for the Committee to develop

Discussion of NOIRA for Condominium Regulations

the regulations. Mr. Rogers seconded the motion which was unanimously approved by: Ahlberg, Cecchi, Ferranti, Kacani, Matthews, Melson, Rogers, Sung, and Trigiani.

The Board recessed for a break at 10:46 a.m. and reconvened at 11:19 a.m. **Break**

The Board discussed a memorandum from Ms. Henshaw regarding a recurring issue that involves the foreclosure of condominiums wherein there are unsold units. Upon learning of a condominium foreclosure (the declarant's property has been foreclosed, not an individual unit owner's property), staff proceeds to ascertain the current status of the condominium and, if still owned by the foreclosing entity, the future plans for the condominium in order to ensure that the registration is compliant with the Condominium Act and the Condominium Regulations. Specifically, staff must know whether the financial institution plans to sell individual units or sell to a successor declarant. Upon learning this information, staff can then advise as to the appropriate steps to ensure the registration remains up-to-date and accurate. According to the memorandum, the problem arises in situations wherein staff is unable to make contact with the foreclosing financial institution or does not obtain cooperation from the financial institution and it proceeds with the sale of the units. **Discussion of Condominium Foreclosures as Applicable to Registration**

After discussion, Board directed staff to i.) ensure that appropriate confirmation from the association is received before releasing the assessment bond or letter of credit; ii.) attempt to obtain a statement from the financial institution to determine the current status and the next course of action; and, iii.) if appropriate, prepare the registration file so that the Board can review the matter in consideration of entering a cease and desist order in accordance with § 55-79.100 of the Code of Virginia if compliance is not obtained and/or sales proceed. In addition, the Condominium Regulatory Review Committee will consider whether regulatory amendments may be necessary regarding this issue.

Ms. Henshaw informed the Board that Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia require the Board to conduct a periodic review of its regulations. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form. Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of **Required Periodic and Small Business Impact Review of Regulations**

applicable law; and (iii) are clearly written and easily understandable.

A periodic and small business impact review was conducted for each of the regulations under the Board's purview and a public comment period was held from October 24, 2011, to November 14, 2011. At the end of the 21-day public comment period, no comments had been received regarding any of the Board's regulations.

Ms. Kacani moved that the Board retain the Public Participation Guidelines, the Condominium Regulations, the Virginia Time-Share Regulations, the Common Interest Community Manager Regulations, and the Common Interest Community Management Information Fund Regulations in their current form. Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, Cecchi, Ferranti, Kacani, Matthews, Melson, Rogers, Sung, and Trigiani.

The Board discussed the Training Program Review Committee membership. The Board agreed by consensus to select Ms. Ferranti to serve as a member.

**Discussion of
Training Program
Review Committee
Membership**

The Board was provided with an overview of staff responsibilities during the upcoming General Assembly Session. Ms. Henshaw explained that all common interest community-related legislation is monitored by Board and Department staff. While staff may provide technical information, data, and statistics regarding legislative proposals, Ms. Henshaw reminded the Board members that neither staff nor the Board has a position on a particular bill until such time as the Governor issues a position.

**Discussion of 2012
General Assembly
Session**

Ms. Henshaw apprised the Board of anticipated legislation affecting the Board's programs during the 2012 legislative session. Previously, the Board put forth a recommendation to amend the Condominium Act and the Time-Share Act to provide for administrative termination of condominium and time-share registrations, as applicable, in the event that certain criteria has been met to warrant termination of the registration. Ms. Henshaw indicated that the Board's proposal was proceeding through the Administration's review process.

In addition, Ms. Henshaw provided an update on a legislative proposal considered by the Virginia Housing Commission that provides for substantial revisions to the Virginia Real Estate Time-Share Act (Chapter 21 of Title 55 of the Code of Virginia). Specifically, the proposal reviewed by the Virginia Housing Commission included similar provisions to the Board's recommendation regarding

administrative terminations of time-share registrations, as well as a proposal to allow the Board to submit a petition to the court for an injunction or appointment of a receiver if the Board has reasonable cause to believe that a managing agent, member of the board of directors, or officer is not properly discharging his fiduciary duties or responsibilities.

Finally, Ms. Trigiani provided general information regarding several other common interest community-related legislative proposals that are expected to be considered during the 2012 legislative session.

The following resolution was presented for consideration by the Board.

**Consideration of
Resolution for
Service**

Resolution for

Ronda S. DeSplinter

WHEREAS, Ronda S. DeSplinter, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2008 to 2011;

WHEREAS, Ronda S. DeSplinter, did devote generously of her time, talent and leadership to the Board;

WHEREAS, Ronda S. DeSplinter, did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Common Interest Community Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Common Interest Community Board this first day of December 2011 that Ronda S. DeSplinter, be given all honors and respect due her for her outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to her and be made a part of the official minutes of the Board so that all may know of the high regard in which she is held by this Board.

Ms. Kacani made a motion to adopt the resolution. Mr. Ahlberg

seconded the motion which was unanimously approved by: Ahlberg, Cecchi, Ferranti, Kacani, Matthews, Melson, Rogers, Sung, and Trigiani.

Ms. Henshaw provided an update on the second issue of *Common Interests*, the Board newsletter. This issue will be finalized once new Board members profiles and the Chair's message have been added. The newsletter will be sent to the Board members for comment within the next couple of weeks and then posted to the web. Ms. Adelman provided an overview of specific topics covered in the current edition. The Board members were asked to submit any ideas, comments, or suggestions for the newsletter to Ms. Henshaw or Ms. Adelman.

Update on Common Interests, CICB Newsletter

The Board recessed for lunch from 12:47 p.m. to 1:33 p.m.

Lunch

Ms. Gillespie provided the Board with the 2010-2011 Annual Report on the Office of the Common Interest Community Ombudsman and provided a handout on developing a better understanding of the Office of the Common Interest Community Ombudsman. She discussed the inquiries and complaints, education and outreach, constituent expectations, legal developments, federal topics, news of interest, and statutory authority related to the Ombudsman.

Ombudsman's Report

Ms. Henshaw provided a copy of statistical information regarding licensing and registration processing activities for October 2011. Specific information included:

Licensing/Registration Statistics

- The number of new applications processed;
- The number of annual reports and renewals processed;
- The number of phone calls and emails handled; and,
- The current regulant population segregated by program.

In addition to the most recent month available, data from one year ago was provided for comparison purposes. Ms. Henshaw indicated that the number of associations continues to rise.

The Board suggested staff send notices to associations who are managed by a provisional common interest community licensee that do not have a standard common interest community manager license so they can be brought into compliance by July 2012.

Ms. Henshaw provided the Board a copy of the most recent financial statement for informational purposes. Also, a copy of the financial statement for the Common Interest Community Management Recovery Fund for the month ended on September 30, 2011 was provided.

Board Financial Statements

The Board previously requested that staff compile a calendar of the common interest community-related events and dates that staff and the Ombudsman attend. The requested information was provided to the Board with the agenda package for information purposes only.

**Staff Event
Calendar**

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

**Complete Conflict
of Interest Forms
and Travel
Vouchers**

There being no further business, the meeting was adjourned at 2:14 p.m.

Adjourn

After adjournment, the Board members participated in the Conflict of Interest Act training as it is required of all board members. Board members Cecchi, Ferranti, and Sung signed certificates verifying that they had completed the training course.

**Conflict of Interest
Act Training**

Lucia Anna Trigiani, Chair

Gordon N. Dixon, Secretary